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EX PARTE – VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: CC Docket Nos. 96-45 and 01-92
WC Docket No. 05-68
Written and Oral Ex Parte Presentation

Dear Ms. Dortch:

On behalf of GCI, I am writing to respond to the recent *ex parte* filing by IDT Telecom, Inc. (“IDT”), wherein IDT argues for special exemptions from universal service payment obligations. The points described below are consistent with my discussion on February 24 with Tom Navin, Chief of the Wireline Competition Bureau. The IDT request for special treatment is unwarranted, would place greater stress on a dissolving universal service base, and is a backdoor effort to evade applicable access charges on telecommunications.

The crux of the IDT filing is that the multi-billion dollar company requires a further special exemption from universal service contribution requirements. IDT would like to deepen the “Limited International Revenue Exemption”, which already exempts international revenues from the USF contribution base when interstate revenues comprise less than 12 percent of a provider’s combined interstate and international end user telecommunications revenues. At the same time that IDT adopts the “USF contribution mechanism is broken” mantra, however, it forwards a solution that will break it further still—a deeper special exception for funding. GCI strongly urges the Commission to reject such a measure and instead move forward to illuminate for such providers what is already clear to the rest of the industry: that each provides a telecommunication service upon which universal service and applicable access charges are due.

First, GCI takes issue with the characterization of enforcing universal service contribution obligations on telecommunications services as a “[c]hange in enhanced prepaid calling cards’ contribution obligations.”¹ Arguing that enforcing contribution requirements is a “change” relies on the unsustainable presumptions that the new obligation is being found. At no time, however, was IDT or any pre-paid provider, entitled to presume that it offered anything other than a telecommunications service. In the *AT&T Pre-Paid Calling Card* proceeding, the Commission clearly set forth that debit card service, at its core, is a telecommunications service—a conclusion that relied on longstanding FCC precedent.² Even if the FCC concludes that some portion of the debit card service is informational in nature, that can hardly be the case for any minute used to place a standard call.

The Court in *Brand X* confirmed the basis for preserving the telecommunications service designation, regardless of whatever “features” the card purports to offer in addition to its core calling service. In describing instances where the ability to make and receive telephone calls is only “trivially affected” by additional capabilities, the Court rejected the theory that any information service offered contaminated the whole of a telecommunications service.³

Second, the notion that a deeper exemption is supported by the *DSL Order* is wholly contrary to the Commission’s rationale in that decision. There, the Commission *retained* universal service obligations for a service it deemed (optionally) to be an information service, in the interest of preserving the universal service base.⁴ The comparable result here would not be postponement of collection, but acting to preserve the sustainability of the fund until contribution reform is enacted, not turning a blind eye to recalcitrant contributors.

Third, the argument that prepaid card providers today pay more than their fair share hardly seems to be a policy basis for excusing USF contributions.⁵ The IDT filing does not explain the reason for the claimed difference between the face-value revenue and what is corrected, but even taking that claim at face value, either proposed solution of increasing the existing exemption or basically not enforcing payment obligations that exist today until the system is reformed is ill-suited to fix the claimed problem, and does so at the expense of universal service.

Finally, the most troubling part of the IDT filing is its effort to undermine the workable solution presented by AT&T, with modifications described by GCI in earlier

¹ IDT *ex parte* at 5 (filed Jan. 18, 2006).

² See *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, Order and Notice of Proposed Rulemaking*, WC Docket No. 03-133, *Order and Notice of Proposed Rulemaking*, FCC 05-41 (rel. Feb. 23, 2005) at ¶¶ 14-21.

³ See *Nat’l Cable & Telecom Ass’n v. Brand X Internet Services*, 545 U.S. ___, slip op. at 26-27 (2005).

⁴ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *et al., Report and Order*, FCC 05-150 (rel. Sept. 23, 2005), ¶ 113.

⁵ See IDT *ex parte* at 6 (“Prepaid calling cards already bear a higher contribution burden than post-paid services”).

filings. The assumption that most of the traffic is international does not jibe with GCI's experience, or the record in the docket, of prepaid calls being routed internationally and with originating call data stripped for the purpose of avoiding access charges. That is why rules prohibiting call data changes to jurisdictionally manipulate traffic must be clarified as necessary and enforced.⁶ Postponing resolution of this issue to "comprehensive dockets" (IDT *ex parte* at 10) simply encourages the Commission to forego its regulatory prerogative to begin addressing pressing compensation issues.

For these reasons, GCI respectfully requests that the Commission reject the IDT proposal for a special exemption and move forward to adopt rules consistent with GCI's previous filings in response to the AT&T Petition.

Sincerely,

/s/

Tina M. Pidgeon

Vice President, Federal Regulatory Affairs

⁶ Under this standard, call data correction or population necessary for the proper jurisdictional treatment of IP-based telecommunications services would be permitted.